

Charles B. Collier, for complainant.
 Geo. J. Harding, for defendant.

DALLAS, Circuit Judge. Prior to the application for the patent in suit, "sealing gaskets" composed of a disk of parchment and a disk of felt, arranged the one upon the other but not secured together, were in use for effecting, and did effect, an air-tight sealing of jars or other vessels to which, for that purpose, they were applied. There was also in use a patented "packing for packages, cans, and vessels of all kinds, in which fluids are to be transported or kept," "composed of a body of tough, flexible material, a sheet of tin or other foil applied thereto, and a flexible waterproof protection or covering;" and the three layers thus described were "glued, cemented, or pasted together." The patent in suit is to Daniel W. Johnson, for "sealing disks for jars," etc., and is No. 408,177, dated July 30, 1889. The claims are:

"(1) A sealing gasket for jars or other vessels, having a base of waterproof material backed with and secured to a felted material, substantially as described. (2) A sealing gasket consisting of a body of felted material having waterproof material secured to its opposite faces, substantially as described."

The novelty of the subject-matter of these claims is at least questionable; but, assuming it to have been new to "secure" the components of the gaskets previously in use, invention was not involved in pasting together the opposite faces of the old disks, and this is all that was done or proposed by the patentee, or is alleged to be done by the defendant. A decree dismissing the bill, with costs, will be entered.

DETWILER v. BOSLER.¹

(Circuit Court, E. D. Pennsylvania. May 9, 1893.)

No. 16.

1. PATENTS FOR INVENTIONS—INFRINGEMENT—MILLS.

Letters patent No. 188,783, granted March 27, 1877, to John S. Detwiler, for an improvement in grinding mills, claimed "the combination of a pair of stones set to grind coarse, with a second pair of stones, of larger diameter, set to grind fine, and run at a lower speed than the upper and smaller pair of stones; the partially ground grain falling from the upper to the lower stones, and passing from the latter in the form of flour." *Held*, that the claim was infringed by the use of rollers revolving in a vertical plane instead of stones revolving in a horizontal plane, the process and its results being essentially the same in other respects; for such rollers are the well-known equivalents of the stones.

2. SAME—EQUIVALENCE—ESTOPPEL.

The patentee was not estopped to set up such equivalence to sustain his claim of infringement by reason of the fact that in a communication to the patent office before his patent was granted he claimed that the result obtainable by his invention was distinguishable from that produced by crushing rollers; for the failure of an inventor to perceive the adaptability of a known equivalent to the practice of his invention does not debar his right to protection against its invasion by the use of such equivalent.

3. SAME—VALIDITY—"GRADUAL REDUCTION" OF FLOUR.

The device claimed by the patent involves invention, though the "gradual reduction" process effected by it was not new.

¹ Rehearing granted.

4. SAME—INFRINGEMENT.

Infringement was not avoided by the use, in connection with the rollers, of a series of "scalpers" or sifting machines, which served a purpose distinct from that of the rollers, and did not vary the mode of their operation, or the result they accomplished.

In Equity. On final hearing. Suit by John S. Detwiler against Joseph Bosler for the infringement of a patent. Decree for complainant.

Charles B. Collier, for complainant.
Horace Pettit, for defendant.

DALLAS, Circuit Judge. This is a suit in equity for alleged infringement of letters patent No. 188,783, for improvement in grinding mills, granted to the complainant, and dated March 27, 1877. The cause has been fully heard upon the pleadings and proofs, and is now for decision.

The only claim of the patent is:

"The combination of a pair of stones, set to grind coarse, with a second pair of stones, of larger diameter, set to grind fine, and run at a lower speed than the upper and smaller pair of stones; the partially ground grain falling from the upper to the lower stones, and passing from the latter in the form of flour, substantially as herein specified."

The defendant's devices and arrangement of parts are not identical with those specifically designated in this claim. Instead of using "stones," revolving in a horizontal plane, he uses rollers, revolving in a vertical plane; but stones and rollers, with this variance in the manner of their revolution, were well-known equivalents in grinding mills, before the application for this patent was made.

It has been urged, however, that the complainant is precluded from asserting this equivalence, because, as is alleged, he had, in aid of his application, denied its existence, and had, in effect, disclaimed rollers. This contention is based upon a communication addressed by the plaintiff's solicitor to the commissioner of patents, in which, by way of argument, the result claimed to be attainable by the applicant's invention was distinguished from that produced by crushing rolls. The contrast which was really intended to be made was not between rollers and stones, but between making flour "practically direct from wheat," and "the crushing of wheat," which it was admitted had been done by rollers. It seems probable that the applicant did not then perceive that rollers might be substituted for burrstones under his method, but ignorance on the part of an inventor of the adaptability of a known equivalent to the practice of his invention does not bar his right to protection against its invasion by the use of such equivalent; and nothing has been shown which should estop the plaintiff from maintaining that right in this case.

The defendant also uses, in connection with his rollers, a series of "scalpers," or sifting machines; but these are additional to the rollers, and have a distinct purpose. Their employment does not vary the mode of operation of the rollers, nor the result which

they accomplish. There are other differences in details between the plaintiff's and the defendant's mechanism, and in its arrangement, but it is not necessary to refer to them. The defendant's expert (Hollingsworth) has testified that, irrespective of scalpers, and assuming that rollers are the equivalents of millstones, the two processes are, in his opinion, exactly the same; and my investigation of the exhibits and of the other evidence satisfies me that this opinion is correct. Hence, as the use of scalpers is immaterial, and as rollers and stones are, in fact, equivalents, it follows that infringement has been shown, and the only remaining question is as to the validity of the patent.

To overcome the presumption of its validity, the defendant has adduced some oral testimony, and has also proved several printed publications, as well as a number of patents, both foreign and of the United States, which he claims establish lack both of invention and of novelty. But, upon careful examination of all the evidence, I have reached the conclusion that neither of these defenses is sustained. If, as the defendant has contended, the complainant supposed himself to be the inventor of "gradual reduction," broadly, and by whatever apparatus or method accomplished, I quite agree in thinking that he was mistaken. But his claim alone is to be considered, and that has no such scope. It is for a particular combination process, embodying a described organized mechanism, operating in a designated manner. It is for a combination of two pairs of stones, (or their equivalents,) the upper pair being of the smaller diameter, and set to grind coarse, and the lower pair being of the larger diameter, and set to grind fine; and so operated that the lower pair shall run at a lower speed than the upper pair, and that the partially ground grain, falling from the upper to the lower, shall pass from the latter in the form of flour. In the defendant's apparatus every element of this claim is present; the same end is achieved by substantially the same means. On the other hand, while it appears that the want which the complainant's invention was intended to supply had been already recognized by those engaged in milling, and that various attempts had been made to meet it, yet the means to that end, which this patentee devised and claimed, had not been previously in use in this country, nor patented or described in any publication either in this or in any foreign country. The conception of these means clearly involved invention, and they were both new and useful. I do not overlook the fact that in some of the uses, publications, and patents set up some one or more of the elements of the plaintiff's invention are present; but in no one of them can all of its essential features be found. It does not appear from the evidence that any of them "embodied substantially the same organized mechanism, operating substantially in the same manner, as that described in the patent claimed to have been anticipated."

The plaintiff is entitled to a decree in the usual form, which may be prepared and submitted.

STEAMSHIP SAMANA CO., Limited, v. HALL.

(District Court, D. Maine. September 22, 1892.)

1. MARINE INSURANCE—LIBEL ON POLICY—LIBELANT.

A marine policy on the steamship Samana insured D., for account of whom it may concern, to be paid, in case of loss, to the steamship company. D. was owner of the entire stock of the company, except a small quantity held by other parties to comply with the incorporation law. The title to the vessel was in the company, and after issuing the policy it sold her to another company, taking a mortgage to D. for a large portion of the price, and agreeing to give the purchaser the benefit of the insurance on the ship, upon payment of a proportion of the premium, until other insurance should be effected. The purchaser was to keep the vessel insured to protect the mortgagee, and for his own benefit. Before other insurance was effected the vessel was lost. *Held*, that under the provisions that, in case of loss, payment should be made to it, the company could maintain a libel on the policy, not only for its own interest, but also for the interest of all others having rights under the policy.

2. SAME—CANCELLATION—LIABILITY FOR LOSS.

A vessel covered by a marine policy was sold, and a mortgage taken for the price, the seller agreeing to give the purchaser the benefit of the insurance until other insurance could be effected. On November 22, 1888, she sailed from New York to Aux Cayes, a voyage usually lasting eight days. On November 24th, 25th, and 26th a hurricane of great violence prevailed over her course, and she was never again heard of; but, as there was no telegraphic communication with Aux Cayes, her failure to reach that port remained unknown for a long time. On December 3d, before any apprehensions as to her safety had arisen, the purchasers of the vessel effected new insurance, to commence on that day, and a cancellation slip was affixed to the policy as follows: "At the request of the assured, this policy is hereby canceled and from Dec. 3, '88, at noon, pro rata premium to be paid for 8 months not used." The unused premium was returned. *Held*, that the cancellation was not intended to, and did not, discharge the insurer from liability for loss prior to the date of cancellation, and that the insured was entitled to recover, the returned premium having been paid into court.

3. SAME—PROOF OF LOSS—WAIVER.

An insurer, by denying liability for loss on the ground that he was released therefrom by a cancellation of the policy, is estopped to object to the want of preliminary proofs.

In Admiralty. Libel on a policy of insurance by the Steamship Samana Company, Limited, against Albert B. Hall. Decree for libelants.

William L. Putnam and D. W. Snow, for libelant.
Benjamin Thompson, for respondent.

WEBB, District Judge. By their policy No. 1,761, dated August 2, 1888, sundry associates of the Portland Marine Underwriters, of whom the defendant was one, insured William B. Duncan, Jr., for account of whom it may concern, to be paid in case of loss to the libelants, \$2,500, from August 3, 1888, at noon, to August 3, 1889, at noon, upon the steamer Samana, her body, tackle, apparel, ordnance, munition, artillery, boat, and other furniture. The hull, tackle, apparel, and furniture were valued at \$25,000; and machinery and boiler, at \$20,000. By the terms of the contract, each subscriber assumed liability only in the proportion of one fiftieth part of the loss. The policy contained this provision, viz.: